

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

RAYMOND C. SELKE, Administrator of
the Estate of YVONNE C. SELKE,
Deceased, on behalf of the Estate of
YVONNE C. SELKE, RAYMOND C.
SELKE, Surviving Husband, and
TREVOR J. SELKE, Surviving Son,

and

RAYMOND C. SELKE, Administrator of
the Estate of EMILY E. SELKE, Deceased,
on behalf of the Estate of EMILY E.
SELKE, RAYMOND C. SELKE,
Surviving Father, and TREVOR J. SELKE,
Surviving Brother,

Plaintiffs,

v.

GERMANWINGS GMBH, a German
corporation; DEUTSCHE LUFTHANSA
AG, a German corporation; UNITED
AIRLINES, an Illinois corporation; and
EUROWINGS GMBH, a German
corporation,

Defendants.

Case No. 1:17-cv-121 (GBL/TCB)

**DECLARATION OF A. ILYAS AKBARI, ESQ. IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO THE MOTION TO DISMISS AND/OR
FOR SUMMARY JUDGMENT OF DEFENDANTS GERMANWINGS GMBH,
DEUTSCHE LUFTHANSA AG, AND EUROWINGS GMBH
FED. R. CIV. P. 12(B)(2) AND 56**

IN THE STATE OF CALIFORNIA, SS:

My name is A. Ilyas Akbari. I have personal knowledge of the following facts stated
herein and I am competent to testify regarding these matters. I therefore declare and state:

1. I am an attorney licensed to practice law in the State of California. I am also a Partner at Baum Hedlund Aristei & Goldman PC. I have been admitted *pro hac vice* to appear in this case as attorney of record for plaintiffs Raymond C. Selke and Trevor J. Selke.

2. The majority of evidence concerning the relationship between United, Lufthansa, Germanwings, and Eurowings with respect to selling each other's plane tickets, how and why a ticket is issued pursuant to a codesharing agreement versus an interline agreement, and the merger of Germanwings with Eurowings is only in defendants' possession.

3. Plaintiffs wish to conduct discovery to request defendants' commercial agreements, including but not limited to codesharing agreements, alliance agreements, blocked space agreements, and similar intercarrier marketing agreements, as well as depose the Persons Most Knowledgeable concerning those agreements and the revenues defendants earn from them, and obtain information regarding the merger of Germanwings with Eurowings.

4. The court has approved plaintiffs' and defendants' Joint Proposed Discovery Plan with Rule 26 disclosures due by May 5, 2017 and all discovery to be completed by August 11, 2017.

5. I believe that the information above will raise a genuine issue of material fact and, therefore, that the present motion should be denied as premature pursuant to Fed. R. Civ. P. 56(d).

6. Filed concurrently herewith as Exhibit "1" is a true and correct copy of a print out from the Commonwealth of Virginia State Corporation Commission's website displaying United Airlines, Inc.'s business entity details.

7. Filed concurrently herewith as Exhibit "2" are true and correct copies of print outs from Virginia state and federal court websites showing the case details of fourteen legal actions filed by United in Virginia.

8. Filed concurrently herewith as Exhibit “3” is a true and correct copy of the English language version of the “Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, S. Treaty Doc. 106-45, 2242 U.N.T.S. 350,” commonly known as the “Montreal Convention,” published by the International Civil Aviation Organization.

9. Filed concurrently herewith as Exhibit “4” is a true and correct copy of the title page, copyright information, and pages 10-8, 10-8.1, and 10-120 of a legal treatise titled “Aviation Accident Law,” published by Matthew Bender.

10. Filed concurrently herewith as Exhibit “5” is a true and correct copy of the title page and pages 4, 15, 17, 21, 22, 39, 40, and 41 of the Senate Report titled “Convention for International Carriage by Air (Treaty Doc. 106-45) and Protocol to Amend the Convention for Unification of Certain Rules Relating to International Carriage by Air (Treaty Doc. 104-14),” published by Congress.

11. Filed concurrently herewith as Exhibit “6” is a true and correct copy of the title page and pages 101-109 of the “Documents of the International Conference on Air Law, ICAO Doc. 9775-DC/2,” published by the International Civil Aviation Organization.

12. Filed concurrently herewith as Exhibit “7” is a true and correct copy of the French language version of the Montreal Convention titled “Convention pour L’Unification de Certaines Règles Relatives au Transport Aérien International,” published by the United Nations.

13. Filed concurrently herewith as Exhibit “8” is a true and correct copy of the cover, copyright information, and pages 40, 41, 181, and 303 of “The Council of Europe French-English Legal Dictionary,” published by the Council of Europe Press.

14. Filed concurrently herewith as Exhibit “9” is a true and correct copy of the cover, copyright information, and page 217 of “Elsevier’s Legal Dictionary,” published by Elsevier B.V.

15. Filed concurrently herewith as Exhibit “10” is a true and correct copy of the cover, copyright information, and pages 237 and 247 of a legal treatise titled “Introduction of French Law,” published by Kluwer Law International.

16. Filed concurrently herewith as Exhibit “11” is a true and correct copy of the title page and pages 2, 44, 105, 107, 150, and 173 of the “Minutes of the International Conference on Air Law, ICAO Doc. 9775-DC/2,” published by the International Civil Aviation Organization.

17. Filed concurrently herewith as Exhibit “12” is a true and correct copy of the title page and pages 177, 243, and 244 of the “Preparatory Material of the International Conference on Air Law, ICAO Doc. 9775-DC/2,” published by the International Civil Aviation Organization.

18. Filed concurrently herewith as Exhibit “13” is a true and correct copy of the United Kingdom civil case titled *Caldwell v. Easyjet Airline Co. Ltd.*, (2015) ScotSC 64, 2015 WL 6395340.

19. Filed concurrently herewith as Exhibit “14” is a true and correct copy of the French civil case titled Cour d’appel de Rennes, 14 Juin 2013, No. 13/01146 in both English and French, with a Certification of Translation by American Language Services.

20. Filed concurrently herewith as Exhibit “15” is a true and correct copy of the Canadian civil case titled *Zoungrana c. Air Algérie*, 2016 QCCS 2311 (CanLII) (Can. C.S. Qué Montréal) in both English and French, with a Certification of Translation by American Language Services.

21. Filed concurrently herewith as Exhibit “16” is a true and correct copy of the cover, copyright information, and pages 57, 62, and 63 of an English translation of “The German Civil Aviation Act,” published by Eleven International Publishing.

22. Filed concurrently herewith as Exhibit “17” is a true and correct copy of pages 1 and 5 of a document entitled “United Continental Holdings, Inc. Form 10-K” for the period

ending December 31, 2015. This public document was obtained from defendant United's website: <http://ir.united.com/financial-performance/sec-filings>.

23. Filed concurrently herewith as Exhibit "18" is a true and correct copy of pages U1, U3, 44, 178, 179, and 183 of a public document entitled "Annual Report 2015" for Lufthansa Group. This document was obtained from defendant Lufthansa's website: <https://investor-relations.lufthansagroup.com/en/finanzberichte/annual-report/2015.html>.

24. Filed concurrently herewith as Exhibit "19" is a true and correct copy of the Member Airlines page of the Star Alliance website: <http://www.staralliance.com/en/member-airlines>.

25. Filed concurrently herewith as Exhibit "22" is a true and correct copy of the BBC news article titled "German airlines drop safety rule prompted by Germanwings crash" that is dated April 28, 2017. This article was obtained from BBC's website: <http://www.bbc.com/news/world-europe-39749803>.

26. Filed concurrently herewith as Exhibit "23" is a true and correct copy of the Reuters news article titled "Eurowings, Germanwings staff to strike" that is dated October 26, 2016. This article was obtained from Deutsche Welle's website: <http://www.dw.com/en/eurowings-germanwings-staff-to-strike/a-36157365>.

27. Filed concurrently herewith as Exhibit "24" is a true and correct copy of the Chicago Tribune news article titled "Crash is Germanwings' first fatal accident" that is dated March 24, 2015. This article was obtained from Chicago Tribune's website: <http://www.chicagotribune.com/news/nationworld/chi-germanwings-first-fatal-accident-20150324-story.html>.

28. Filed concurrently herewith as Exhibit "25" is a true and correct copy of the Routes Online news article titled "germanwings Moves 55 Routes to Eurowings from late-Oct

2015” that is dated March 23, 2015. This article was obtained from the Routes Online website: <http://www.routesonline.com/news/38/airlineroute/247920/germanwings-moves-55-routes-to-eurowings-from-late-oct-2015/>.

29. Filed concurrently herewith as Exhibit “26” is a true and correct copy of the Routes Online news article titled “germanwings / Eurowings Route Transfers in April 2016” that is dated April 7, 2015. This article was obtained from the Routes Online website: <http://www.routesonline.com/news/38/airlineroute/248201/germanwings-eurowings-route-transfers-in-april-2016/>.

30. Filed concurrently herewith as Exhibit “27” is a true and correct copy of the Skift news article titled “Lufthansa Group Thinks It Has an Answer to Ryanair’s New German Incursion” that is dated November 3, 2016. This article was obtained from the Skift website: <https://skift.com/2016/11/03/lufthansa-group-thinks-it-has-an-answer-to-ryanairs-new-german-incursion/>.

31. Filed concurrently herewith as Exhibit “28” is a true and correct copy of a Lufthansa Group press release titled “The new Eurowings has taken off” that was obtained from the Lufthansa Group website: https://www.lufthansagroup.com/nc/en/themen/eurowings.html?sword_li.

32. Filed concurrently herewith as Exhibit “29” is a true and correct copy of a print out from the State of Florida Division of Corporations website displaying Eurowings GmbH, LLC business entity details.

33. Filed concurrently herewith as Exhibit “30” is a true and correct copy of a print out from the Nevada Secretary of State website displaying Eurowings GmbH, LLC business entity details.

34. Filed concurrently herewith as Exhibit “31” is a true and correct copy of a print out from the Secretary of the Commonwealth of Massachusetts website displaying Eurowings GmbH, LLC business entity details.

35. Filed concurrently herewith as Exhibit “32” is a true and correct copy of a print out from the Washington Secretary of State website displaying Eurowings GmbH, LLC business entity details.

36. Filed concurrently herewith as Exhibit “33” is a true and correct copy of a print out of the “Flights to USA” page of Eurowings’ website: <https://www.eurowings.com/en/booking/offers/flights-to/-US.html>.

37. I typed “www.germanwings.com” into my web browser and was automatically redirected to the Eurowings website. Filed concurrently herewith as Exhibit “34” is a true and correct copy of a print out from Eurowings’ website: <https://www.eurowings.com/us.html>.

38. Filed concurrently herewith as Exhibit “35” is a true and correct copy of a print out of the “Travel Guide” page of Lufthansa’s website: <https://www.lh-travelguide.com/us/en/all-airports/>.

39. Filed concurrently herewith as Exhibit “36” is a true and correct copy of the document titled “Declaration of Brian Fitzgerald in Support of Motion for Summary Judgment of United Airlines, Inc.” filed as Document 15-1 in this action.

40. Filed concurrently herewith as Exhibit “37” is a true and correct copy of the United States District Court, Northern District of Illinois decision titled *Wayne A. Benjamin, et al. v. Delta Air Lines, Inc., et al.* and dated September 10, 1971.

41. Filed concurrently herewith as Exhibit “38” is a true and correct copy of the Application of Germanwings GmbH for an Exemption and Blanket Statement of Authorization and Application of United Airlines, Inc. for an Amended Exemption. This public document was

obtained from the U.S. Department of Transportation website:
<https://www.noticeandcomment.com/Application-of-Germanwings-GmbH-for-an-Exemption-and-Blanket-Statement-of-Authorization-fn-147817.aspx>.

42. Filed concurrently herewith as Exhibit “39” is a true and correct copy of the Notice of Action Taken – Dockets DOT-OST-2014-0120 and DOT-OST-2004-19148. This public document was obtained from the U.S. Department of Transportation website:
<https://www.noticeandcomment.com/Notice-of-Action-Taken-re-Germanwings-GmbH-fn-192946.aspx>.

43. Filed concurrently herewith as Exhibit “42” is a true and correct copy of the Codeshare Agreement between Germanwings GmbH and United Airlines, Inc. dated June 12, 2014. This public document was obtained from the U.S. Department of Transportation website:
<https://www.noticeandcomment.com/Germanwings-GmbH-and-United-Airlines-Inc-Redacted-Copy-of-the-Codeshare-Agreement--fn-149289.aspx>.

44. Filed concurrently herewith as Exhibit “43” is a true and correct copy of the cover, copyright information, and page 37 of a legal treatise titled “Liability Rules Applicable to International Air Transportation as Developed by the Courts in the United States,” published by Wolters Kluwer.

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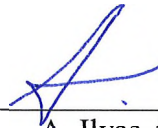
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45. Filed concurrently herewith as Exhibit "44" is a true and correct copy of pages 1 and 117 of the July 2016 U.S. Department of Transportation Code Share Report. This public document was obtained from the U.S. Department of Transportation website: <https://www.transportation.gov/office-policy/aviation-policy/code-share-report>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in the State of California on May 24, 2017.



A. Ilyas Akbari, Declarant